

# The Right to Free Elections in the TikTok Era: Towards Digital Expertise of the Venice Commission?\*

Raphaël Déchaux

## Table of Contents

Introduction. – 1. A Classical Approach to Electoral Interference – 1.1. The observation: the Spread of Fake News through Social Media – 1.2. A proposal: Strengthening the Supervision of Electoral Funding Laws – 2. Taking the Algorithmic Structure of Social Media Seriously. – 2.1. The question: Is the Regulation of Social Media Democratic? – 2.1.1. The classic Debate on the Guarantee of Free Speech online – 2.1.2. Do Social Media Function as a Democratic Agora? – 2.2. The issue: Regulating the Algorithmic Architecture of Social Media for Safeguarding Freedom of Thought from the Excesses of Freedom of Expression – 2.2.1. An Algorithmic Design Aimed at Fostering User Dependency on Social Media – 2.2.2. Algorithmic Programming Leading to the Radicalization of Social Media Users – 2.2.3. TikTok’s Algorithm: A Foreign Weapon in the Service of Disinformation – 3. Conclusion.

## Introduction

For 35 years, the Venice Commission has defended the European constitutional heritage<sup>1</sup>. It has successfully adapted to evolving practices and technologies. In an age where populism, illiberalism and extremes are gaining ground<sup>2</sup>, these forces are finding an unexpected strength in digital technologies<sup>3</sup>. In its early days, the Internet was considered a place of freedom that would allow the free communication of ideas, and therefore foster democracy. As a liberal, decentralized forum, governments and le-

---

\* Su determinazione della direzione, il contributo è stato sottoposto a referaggio anonimo in conformità all’art. 15 del regolamento della Rivista

<sup>1</sup> Ch. Giannopoulos – L.-A. Sicilianos (eds.), *Le patrimoine constitutionnel européen entre progression et régression*, Paris, 2024.

<sup>2</sup> M. Belov, (ed.) *Populist Constitutionalism and Illiberal Democracies: Between Constitutional Imagination, Normative Entrenchment and Political Reality*. Cambridge, 2021.

<sup>3</sup> CoE – PACE, *Final declaration, Parliamentary conference – Elections in times of crisis* (Bern, 9-10 May 2023).

gal systems were perceived as the main threat<sup>4</sup>. Although digital technologies have clearly brought many benefits to our modern societies, they also carry numerous dangers. Among these, the malicious use of artificial intelligence (AI) and social media during elections is undoubtedly one of the most serious<sup>5</sup>. The Venice Commission quickly acknowledged these new dangers. A first opinion in June 2019 analyzed the impact of digital technologies on elections<sup>6</sup>. A second opinion, focusing specifically on the use of digital technologies during elections, was released in December 2020<sup>7</sup>. Recently, in December 2024, an interpretative declaration updated the *Code of Good Practice in Electoral Matters*, covering digital technologies and AI issues<sup>8</sup>.

History occasionally enters a period of acceleration. A groundbreaking event of the last few months was the invalidation of the Romanian presidential elections by the Constitutional Court (RCC) on 6 December 2024<sup>9</sup>. The political reactions – both at the national and European levels – were massive. The Parliamentary Assembly of the Council of Europe requested the Commission to deliver a general opinion on the lawfulness of such a decision<sup>10</sup>. The question was as follows: «Under which conditions and under which legal standards can a constitutional court invalidate elections, drawing from the recent Romanian case?» The objective was therefore not to provide a substantive assessment of the RCC's decision<sup>11</sup>, but rather to offer a general opinion on the legal situation it had faced. The urgent report was released on 27 January 2025, and was subsequently endorsed at the Venice Commission's 142<sup>nd</sup> Plenary Session on March 2025<sup>12</sup>. It

---

<sup>4</sup> See J. P. Barlow, *A Declaration of Independence of Cyberspace*, 1996.

<sup>5</sup> CoE – Ad hoc Committee on Artificial Intelligence, *Possible elements of a legal framework on artificial intelligence, based on the Council of Europe's standards on human rights, democracy and the rule of law*, 3 February 2022, CM(2021)173-add.

<sup>6</sup> CoE – Venice Commission, *Joint Report of the Venice Commission and of the Directorate of Information Society and Action against Crime of the Directorate General of Human Rights and Rule of Law (DGI), on Digital Technologies and Elections*, opinion n° 925/2018, CDL-AD(2019)016, 21-22 June 2019.

<sup>7</sup> CoE – Venice Commission, *Principles for a fundamental rights-compliant use of digital technologies in electoral processes*, opinion n° 974/2020, CDL(2020)037, 11-12 December 2020.

<sup>8</sup> CoE – Venice Commission, *Code of Good Practice in Electoral Matters*, CDL-AD(2024)044, 10 December 2024.

<sup>9</sup> RCC, 6 December 2024, ruling n° 32. An English translation is available on the Court's website.

<sup>10</sup> See also EU – European Parliament, *Matthieu Valet's Parliamentary question*, P-000150/2025, 15 January 2025 ; EU- European Commission, *Press release*, 5 December 2024.

<sup>11</sup> The ECtHR judges unanimously declared the application inadmissible: *Călin Georgescu v. Romania*, app. no 37327/24 (2025).

<sup>12</sup> CoE – Venice Commission, *Urgent Report on the cancellation of election results by Constitutional Courts*, opinion n° 1218/2024, CDL-AD(2025)003, 14-15 March 2025. The first one (CDL-PI(2025)001, 27 January 2025) was not an interim opinion (Article 14c, paragraph 2 of the *Rules of Procedure of the Venice Commission*, as amended in 2023), but an urgent opinion (Article 14a of the *Rules of Procedure*, as amended in 2018 – CDL-AD(2018)019 – which has been applied in approximately thirty opinions to date).

addresses two distinct legal issues. The first concerns the general jurisdiction of constitutional courts to annul presidential elections. The second pertains to the protection of the right to free and fair elections within the contemporary digital environment. The present analysis will be confined to the latter issue in a broad perspective<sup>13</sup>.

Before going any further, let us recall that the populist candidate Calin Georgescu came out on top in the first round, to everyone's surprise, securing nearly 23% of the votes cast. This result is all the more surprising given that he was virtually unknown until November 14, and was polling at less than 5%. He was previously a cryptocurrency specialist<sup>14</sup>. After the first round on November 24, the Romanian Supreme Council of National Defence met on November 28, 2024, to examine the legality of the electoral campaign. The Constitutional Court issued an initial ruling on December 2, validating the election. However, following the submission of the National Defence Council's investigation findings to the judges on December 6, the Court issued a second ruling that led to the annulment of the first round of the presidential election<sup>15</sup>. The Council noted that Calin Georgescu had «benefited from massive exposure» and «preferential treatment» from the TikTok platform. The body also «confirmed that, in the current regional and especially electoral context, Romania – as well as other NATO eastern flank states – has become a priority target for hostile actions by both state and non-state actors, particularly the Russian Federation, which has shown increasing interest in influencing the public agenda of Romanian society».

What is at stake here? The shadow of the Cambridge Analytica scandal still looms over us<sup>16</sup>. Everyone committed to democracy who has studied this event should ask themselves: if the British Supreme Court had known what was happening then, what could its decision have been? More importantly, which country will be the next to see its election results rigged by algorithmic propaganda<sup>17</sup>? Each European electoral oversight authority will face this question in the next few years, or has already done so. And so did the RCC last December. Academics also reacted strongly to the annulment<sup>18</sup>. Probably because Facebook, WhatsApp, TikTok – and more

<sup>13</sup> The consequences of the annulment in Romania will not be addressed in the present analysis. On 11 March 2025, the RCC issued a significant ruling preventing Georgescu from contesting the new electoral rounds. See, B. Iancu, *Romanian Militant Democracy and the Time Machine*, in *Verfassungblog.de*, 13 March 2025.

<sup>14</sup> T. Ross – V. Jack – A. Petre, *Who is Călin Georgescu, the far-right TikTok star leading the Romanian election race?*, in *Politico.eu*, 25 November 2024.

<sup>15</sup> B. Iancu, *Militant Democracy and Rule of Law in Three Paradoxes: The Annulment of the Romanian Presidential Elections*, in *Hague Journal on the Rule of Law*, 2025.

<sup>16</sup> P. Day, *Cambridge Analytica and Voter Privacy*, in *Georgetown Law Technology Review*, 4(2), 2020, 583 ff.; C. Panait – C. Ashraf, *AI algorithms – (re)shaping public opinions through interfering with access to information in the online environment?*, in *Europuls Policy Journal*, 1(1), 2021, 46 ff.

<sup>17</sup> J. O. Islas-Carmona – F. I. Gutiérrez-Cortés – A. Arribas-Urrutia, *Disinformation and political propaganda: An exploration of the risks of artificial intelligence*, in *Explorations in Media Ecology*, 23, June 2024, 105 ff.

<sup>18</sup> For example: A. Mercescu, *The Romanian Constitutional Court doing “militant democracy” (twice and more to come)*, in *Journal of Contemporary Central and Eastern Europe*, 33(1), 2025, 251ff.; D.-A. Cărămidariu – A. Verțeș-Olteanu, *Safeguarding democracy: constitutional insights from*

broadly the way social media are programmed – have become genuine subjects of study for constitutionalists and fundamental rights scholars<sup>19</sup>. A real form of “digital constitutionalism” now exists<sup>20</sup>. Given the worrying accumulation of evidence that such technologies are being used to hijack the electoral process, the Venice Commission – like other Council of Europe bodies<sup>21</sup> – has gradually taken up these issues. For example, in a resolution adopted on March 9, 2022, the European Parliament emphasized that «it has been demonstrated that foreign, malicious, and authoritarian actors – both state and non-state – among them Russia and China, use information manipulation and other interference tactics to meddle in democratic processes» of European states<sup>22</sup>. The Members of the European Parliament also denounced the fact that «foreign interference, information manipulation, and disinformation constitute a violation of the fundamental freedoms of expression and information», and that they «undermine democratic processes».

The Venice Commission is a body of international constitutional experts<sup>23</sup>. Like all legal professionals, it will have to acquire new competences in the coming years, particularly in digital expertise. It is no longer sustainable to envision electoral monitoring without a clear understanding of how social media – and especially AI – is influencing democratic elections. The purpose of this paper is, first, to examine the basic principles underlying its doctrine: how does the Venice Commission protect in the digital context the right to free elections, as guaranteed by Article 3 of Protocol n° 1 of the ECHR? And how can we ensure the quality of the electoral process in an age of social media, democratic crisis, and growing distrust of journalism? The future of digital election monitoring must also be examined: what standards could be introduced to strengthen this oversight? And how can foreign interference in European elections – particularly through the use of TikTok – be controlled? These digital issues will certainly determine the future of the Venice Commission’s electoral expertise. In its March 2025 Opinion, the Venice Commission, consistent with its prior work, advanced a traditional approach to the condemnation of electoral interference (1.). However, in its June 2019 Opinion, it had

---

Romania’s election annulment, in *Diritto pubblico comparato ed europeo*, 27(1), 2025, 139 ff.

<sup>19</sup> E. P. N. Meyer – F. B. P. Polido, *Deciding not to decide? The role of the electoral superior court in the digital constitutionalism field*, in *Revista Justica do Direito*, 36(2), 2022, 129 ff.

<sup>20</sup> I. Spiecker gen. Döhmann – L. Schertel Mendes – R. Campos (eds.), *Digital Constitutionalism*, Baden-Baden, 2025. K. Yilma, *Reimagining digital constitutionalism*, in *Global Constitutionalism*, Cambridge, 2025, 1 ff.

<sup>21</sup> CoE – PACE, *Media freedom as a condition for democratic elections*, Resolution 2254(2019), 23 January 2019 ; CoE – European Committee on Democracy and Governance, *Study on the Impact of Digital Transformation on Democracy and Good Governance* (CDDG(2021)4 Final), 26 July 2021.

<sup>22</sup> EU – European Parliament, *Resolution on foreign interference in all democratic processes in the European Union, including disinformation*, 2020/2268(INI), P9\_TA(2022)0064, 9 March 2022. See D. Malaj – N. Mahmutaj, *Assessing determinants and impact of possible russian influence in the western balkan countries*, in *Baltic Journal of Law and Politics*, 16(1), 2023, 148 ff.

<sup>23</sup> S. R. Dürr, *The Venice Commission*, in T. Kleinsorge, *Council of Europe*, in J. Wouters (ed.), *International Encyclopaedia of International Laws: Intergovernmental Organizations*, Amsterdam, 2010, 151 ff.

laid the groundwork for a more profound consideration of the risks associated with algorithmic manipulation (2.).

### **1. A Classical Approach to Electoral Interference**

The Commission's report thus remains within a classical framework regarding the analysis of the risks that may justify annulment. It notes, first, that social media enables the unprecedented dissemination of false information (1.1.). It then proposes including, within candidates' campaign accounts, all social media posts that may be regarded as forms of electoral propaganda (1.2.).

#### **1.1. The Observation: The Spread of Fake News Through Social Media**

One of the distinctive features of European electoral law, as clearly reaffirmed by the Venice Commission in its report, is that the violation of one of its rules can only lead to the annulment of an election if it has had a significant impact on the election result: it is the *ultima ratio* doctrine<sup>24</sup>. In other words, an electoral offence is not, in itself, sufficient to justify a sanction (unlike in criminal law, for example). This is explained by the particularly high stakes associated with electoral law: annulling an election carries far-reaching political consequences and, above all, may adversely affect candidates who have not themselves engaged in any wrongdoing<sup>25</sup>. For this reason, such a decision can only be taken as a measure of last resort. This aspect is particularly delicate from a legal standpoint. Demonstrating that an election has been distorted is extremely difficult to establish in judicial proceedings<sup>26</sup>. Only formal or material forms of electoral fraud – such as ballot stuffing, the use of invalid ballots, or violent intimidation at polling stations, *etc.* – are relatively straightforward to prove. The dissemination of fake news constitutes a form of interference that undoubtedly undermines the right to free elections and fair consultation. However, its direct impact is extremely difficult to establish. This is, firstly, because deception in democratic elections is as old as elections themselves<sup>27</sup>; and secondly, because fake news often functions more as a tool for confirmation bias or for shifting the boundaries of acceptable discourse rather than providing factual content or (false) interpretative elements that could be used to advance arguments in a debate. At a more

---

<sup>24</sup> CoE – Venice Commission, *Report on election dispute resolution*, opinion n° 913/2018, CDL-AD(2020)025, 8-9 October 2020, para. 128.

<sup>25</sup> CoE – Venice Commission, *Urgent Report on the cancellation of election results by Constitutional Courts*, cit., para.18-39.

<sup>26</sup> *Ibid.*, para. 50 ff.

<sup>27</sup> As noticed in the report: «Statements on policy made by candidates in the context of an election may often be regarded by their opponents as disinformation or false information », *ibid.* para. 53.

fundamental level, voters have the right to hold false beliefs, and it is exceedingly challenging to prove a direct causal link between the dissemination of fake news and the formation of such beliefs<sup>28</sup>. This finding raises fundamental issues for contemporary constitutionalism. Can the dissemination of false information genuinely persuade a voter to support a fanciful, radical, or foreign-influenced candidate? Or does it merely serve to confirm or validate pre-existing opinions – however fanciful, radical, or externally inspired – they have already formed? The answer is far from clear<sup>29</sup>; yet it is precisely this uncertainty that underpins the legitimacy of electoral oversight concerning fake news.

The spread of fake news accounts for Georgescu's success and, consequently, for the decision of the RCC. Moreover, the reach of his campaign on TikTok appears to be the result of Russian interference, although such involvement was not officially acknowledged in the Court's decision of 6 December 2024<sup>30</sup>. Although the March 2025 report does not focus on this issue – since the Commission was not mandated to assess the legality of the judgment of 6 December 2024 – it nonetheless devotes substantial developments to it. A close reading of these sections reveals that they form part of the broader line of work pursued since the opinion issued in June 2019.

The position adopted by the Commission in its report of 27 January 2025 should likely be read in conjunction with the *Interpretative Declaration on Digital Technologies and Artificial Intelligence*, adopted in December 2024<sup>31</sup>. Paragraph 7 of that declaration, concerning the right to free elections, recalls the requirement that the formation of a free opinion is essential to the effective exercise of this right<sup>32</sup>. Paragraph 8 addresses the specific risks posed to the formation of such free opinion by algorithmic processes, though it limits its focus to the dangers associated with Deepfakes

---

<sup>28</sup> One cannot annul a vote on the grounds that voters believe the Earth is flat and that social media videos promote this conspiracy theory, since it is clear that some of these voters genuinely hold this belief. To invalidate their votes would effectively make the electoral authority the arbiter of scientific truth, an untenable position in a democratic system.

<sup>29</sup> Thus, the annulment of the first round of the Romanian presidential elections and the increased oversight of social media by the authorities did not lead voters to change their preferences in the 4 May vote: the far-right, pro-Putin and pro-Trump candidate is reported to have received just under 41% of the vote, according to tallies as of the morning of 5 May. See T. Ross – C. Paun – A. Popoviciu, *Romanian court cancels presidential election amid Russian influence fears*, in *Politico.eu*, 6 December 2024.

<sup>30</sup> By contrast, Russia is explicitly identified as being behind the disinformation campaign in the second judgment, see RCC, ruling no. 7, 11 March 2025, §§ 55 ff.

<sup>31</sup> CoE – Venice Commission, *Interpretative declaration to the Code of good practice...*, cit. By coincidence, this text was adopted at the same time as the RCC annulled the presidential election.

<sup>32</sup> «To protect the freedom of voters to form an opinion, the free exchange of opinions and ideas online and open public debate should be facilitated. This requires internet access and the effective right to seek, receive, and share information of all kinds. The principle of non-discriminatory treatment of internet traffic and the users' right to receive and impart information and to use services of their choice should be upheld».

and conversational interactions with AI<sup>33</sup>. At present, there is no known evidence that such AI-driven conversations – without the human interlocutor’s awareness – are a widespread phenomenon in disinformation campaigns. One may also question their actual effectiveness. Nonetheless, identifying this risk is entirely legitimate and aligns well with the observations we shall present in the second part of this paper.

The 2024 declaration also refers to the fact that AI enables the mass creation of fake accounts used to disseminate “fake news”. Paragraph 27 further clarifies the adjustments that States must make in order to ensure the compatibility of digital technologies and AI with the organisation of free, independent, and impartial elections. However, this provision focuses primarily on the use of AI by public electoral authorities. These concerns differ significantly from those related to the use of AI during electoral campaigns by actors who may be only partially identified. It is the interpretative explanations accompanying the declaration that extend the recommendations of the *Code of Good Practice* to include these actors<sup>34</sup>. Moreover, in its March 2025 report, the Commission also recommends that «legal provisions should also be adopted to ensure that there is a minimum access to privately owned online media and to the functions and services provided by internet intermediaries, as well as to digital tools and AI technologies to manage their campaigns»<sup>35</sup>. One may also refer to the risks more precisely described by the Commission in its report of June 2019<sup>36</sup>. It could be argued that the Commission might have elaborated further on this risk, which appears to us more significant than that posed by the use of AI by electoral authorities.

### **1.2. A Proposal: Strengthening the Supervision of Electoral Funding Laws**

One of the tools proposed by the Commission to address the problem of online disinformation is the regulation of campaign financing. This has been the Commission’s consistent position since 2019<sup>37</sup>. This legal

---

<sup>33</sup> Whenever AI systems are used in elections, voters should be informed that they are interacting with such systems rather than with a human (art. 50 of the AI Act). Political “deep fakes”, namely the distribution of deceptive AI-generated content to influence an election or to infringe voters’ freedom to make informed decisions, should be prohibited and sanctioned.

<sup>34</sup> Para. 34 : «this interpretative declaration is not restricted to a specific provision of the Code. Instead, it seeks to provide an updated framework for the guidelines throughout the entire Code. The declaration begins with guideline I.3.2 on the freedom of voters to form an opinion, as this issue is particularly affected by the use of digital technologies and artificial intelligence in electoral processes. Due to the prevalence of digitally-driven information disorders and plethora of information available online, voters are not only hindered in their ability to form opinions about candidates and electoral alternatives, but they are sometimes also misled about registration, voting procedures, or even the integrity of election results».

<sup>35</sup> CoE – Venice Commission, *Urgent Report...*, cit., para. 55.

<sup>36</sup> CoE – Venice Commission, *Joint report...*, cit., para 116 ff.

<sup>37</sup> *Ibid.*, para. 116 and 149 ff.

framework, by its binding (financial) nature, would serve to limit the dissemination of false information on social media platforms. Relying on the principle of equality, the Commission recalls that «fairness in content dissemination and access should be observed: regulations should be implemented to ensure that AI algorithms by internet intermediaries do not favour certain parties or candidates over others, maintaining a balance in the visibility of electoral content»<sup>38</sup>. It further proposes that online campaigns «should still be subject to the general rules on campaign finance and transparency»<sup>39</sup>, thereby reaffirming proposals aimed at strengthening the regulation of online political advertising. The prohibition of anonymous campaigning online is also reiterated<sup>40</sup>. While these proposals are important and should be taken seriously by legislators and electoral authorities in European states, their practical feasibility raises a number of challenges that – regrettably – appear to be irresolvable.

As for the principle of equality between candidates, it appears somewhat utopian. In cases involving significant stakes, such as foreign interference by Russia, one must distinguish between, on the one hand, candidates who participate in the electoral process in good faith – albeit with ideological biases or subjectively framed arguments – and, on the other hand, those who have openly declared a form of political warfare against liberal democracies. It is therefore highly questionable to assume that the latter would willingly comply with electoral rules. As for democratic candidates, it is imperative that they do not resort to the same methods as their adversaries, particularly large-scale disinformation, lest they undermine the very principles they seek to uphold.

With regard to strengthening transparency rules and attributing social media publications to identified candidates, once again, the practical feasibility of such measures appears highly uncertain. Firstly, as a matter of principle, it seems impossible to include in a candidate's campaign accounts the publications disseminated by supporters or mere sympathizers. Yet, these are precisely the individuals most often responsible for the mass circulation of false information. Secondly, in practical terms, publications aimed at undermining the right to form a free opinion are rarely disseminated under the official banner of the political party they are intended to benefit. This is especially true in the context of combating foreign interference, which heavily relies on fake accounts – so-called “troll farms”. One can hardly imagine the individuals behind a video questioning the gender of a head of state's spouse, or alleging a European Masonic conspiracy, voluntarily affiliating themselves with a political party. In truth, this proposal only makes sense in relation to political parties and movements that engage in the electoral process in good faith.

Finally, a significant blind spot in the analysis concerns the sociology of electoral campaigns conducted on social media<sup>41</sup>. These campaigns bear

---

<sup>38</sup> CoE – Venice Commission, *Urgent Report...*, cit., para.55.

<sup>39</sup> *Ibid.*, para. 56.

<sup>40</sup> CoE – Venice Commission, *Interpretative Declaration of the Code of Good Practice...*, cit., para. 11.

<sup>41</sup> We therefore dissent from this analysis of the Venice Commission : «it should be

little resemblance to those of the 1990s or the early 2000s. Their transformation can be summed up in a single word: participation. While public arguments – texts, videos, and images – continue to be produced primarily by political parties or candidates’ campaign teams, their dissemination has undergone a profound change. What was once the responsibility of party activists is now, to an overwhelming extent, the work of unaffiliated sympathizers<sup>42</sup>. These individuals, who have no formal ties to any political party or candidate, use the vast and instantaneous forum of social media to express their political opinions – a minority possibly using AI-generated fake accounts. In doing so, they circulate electoral propaganda – whether in good or bad faith, as do professional politicians and activists – that cannot, and arguably should not, be included within the scope of the official electoral campaign. It is beyond doubt that Georgescu’s campaign was primarily disseminated through this new form of online sympathizer. At present, no conceivable legal mechanism could adequately account for this increasingly significant dimension of electoral politics in Western democracies. Yet, this phenomenon produces a structural imbalance that benefits certain parties and, in particular, radical or extremist movements. It is their sympathizers who tend to be especially active on social media, unlike those aligned with moderate or liberal parties.

Admittedly, the Venice Commission is correct in highlighting the strengthening of electoral laws as a means of regulating social media. It also proposes, in its opinions, other measures that appear entirely relevant, such as reinforcing safeguards related to the principle of «net neutrality»<sup>43</sup>, enhancing sanctions for electoral cybercrime<sup>44</sup>, and holding intermediaries accountable<sup>45</sup>. One can only doubt, however, that these measures will be sufficient in the face of the scale of attacks confronting democracies, of which Romania represents just one example.

## **2. Taking the Algorithmic Structure of Social Media Seriously**

The Venice Commission’s doctrine can be strengthened by focusing on the algorithmic risks outlined in the texts it has adopted. This focus does not imply that the other risks previously identified are insignificant; on the

---

noted that electoral campaigns are in essence information campaigns by the candidates designed to convince the voters», *Joint report...*, cit., para 53.

<sup>42</sup> It would likely be possible to establish a correlation between the decline in the number of party members – an observable trend since the late 1990s – and the rise of political engagement online by unaffiliated sympathizers on social media. It may, moreover, become necessary to draw a more formal distinction between the traditional sympathizer – who attended rallies, was receptive to party propaganda, and was a recurrent voter – and the new category of online sympathizers, who may spend hours each week sharing hundreds of pieces of content in support of a particular ideology or candidate.

<sup>43</sup> CoE – Venice Commission, *Principles for a fundamental rights-compliant...*, cit., para 59 ff.

<sup>44</sup> *Joint report...*, cit., para 80 ff.

<sup>45</sup> By Internet intermediaries, the Commission means internet service providers, and search-engine and social media companies: *Joint report...*, cit., para 70 ff.

contrary, they remain deeply concerning. However, we contend that the Commission's analysis could be broadened in this regard. The preliminary question to be addressed is why the Commission's digital analysis confines itself to condemning the dissemination of fake news, without engaging in a more substantive inquiry into the algorithmic architecture underlying such phenomena – an architecture which, in our view, constitutes the genuine source of the danger posed by contemporary misinformation. Indeed, false information has always existed; it is not, in itself, a novel threat<sup>46</sup>. The present concern, therefore, cannot be reduced to the mere capacity of AI to exponentially multiply the automated agents (bots) that disseminate such content. The explanation lies in the fact that the Venice Commission adheres to the conventional – though, we submit, erroneous – doctrine whereby freedom of expression on social media is regarded as a constitutive element of democratic deliberation (2.1.). Yet freedom of expression is not intrinsically political: it may assume artistic, commercial, or religious forms. Within the framework of fundamental rights theory, these distinct dimensions of expression are not afforded an equivalent degree of legal protection.

It is therefore tenable to argue that, while the protection of freedom of expression on social media platforms remains a legitimate and necessary objective, such protection must be contextualised by reference to the technical and structural conditions that render this expression possible. These conditions are algorithmically designed to pursue aims that often diverge significantly from those of democratic discourse. Accordingly, it is this algorithmic programming that ought to be the object of regulatory scrutiny, lest freedom of expression become, paradoxically, the gravedigger of freedom of thought (2.2.). Consequently, it is through the limitation and regulation of the AI systems embedded within social media infrastructures – rather than through the restriction of freedom of expression *per se* – that the legal guarantees of the right to free and fair elections may be most effectively reinforced.

## **2.1. The Question: Is the Regulation of Social Media Democratic?**

The entire issue hinges on this question. If social media platforms prove to be essential to democratic debate, it becomes both legally and politically difficult to regulate them without infringing upon the right to freedom of expression (1). It is therefore necessary to recall their underlying purpose and function in order to assess whether the very idea of regulation is feasible (2).

---

<sup>46</sup> *Supra*, note 27. The Commission also noted that «disinformation, misinformation or sensationalism are [not] new phenomena», CoE – Venice Commission, *Joint report...*, cit., para 25.

### 2.1.1. The Classic Debate on the Guarantee of Free Speech Online

The fundamental issue underlying the judgment of the RCC of 6 December 2025 – and one that resonates across all digital democracies – lies essentially in the judicial control of freedom of expression during electoral campaigns. Freedom of expression has never been regarded as an absolute right. Nevertheless, European human rights law has, until now, maintained a predominantly formal conception of the legitimacy of restrictions on this freedom: silence periods, exclusion zones around polling stations, campaign financing rules, and transparency obligations<sup>47</sup>. This approach reflects the spirit of the ECtHR’s well-established jurisprudence, which insists on the necessity of tolerating speech that is foolish, false, or non-consensual<sup>48</sup>. The only permissible limitations, consistently upheld, concern expressions that incite hatred or violence.

In a sense, the spread of fake news, and the imperative to combat it, calls into question the adequacy of this classical approach. The risk lies in the possibility that measures to combat fake news could potentially permit governments to exercise unprecedented control over freedom of expression, positioning themselves as arbiters of political truth. No democracy could countenance such a return to censorship<sup>49</sup>. It may be assumed that this is the reason why the March 2025 opinion is so terse regarding the need to regulate social media platforms<sup>50</sup>. Yet, the imperatives of a robust democracy and the protection of constitutional heritage push toward a more substantive framing of democratic regulation, in light of the expansion of online propaganda. Achieving this balance will undoubtedly be delicate, but European states – and the institutions of the Council of Europe – cannot afford to cling to an approach to freedom of expression that is entirely outdated in the face of threats to electoral integrity and the risks of foreign interference.

The ambition to regulate social media must be tempered by a sense of realism. First, because social media platforms offer undeniable advantages<sup>51</sup>. They constitute a virtually cost-free, universal agora in which democratic ideas may be expressed anonymously. Compared to the “pre-digital” world, this means that no prerequisites, notoriety, or credentials are required in order to take part in public debate. Only the strength of one’s argument matters. While anonymity does entail considerable drawbacks, these are not sufficient to discredit the role of social media entirely. There

<sup>47</sup> CoE – Venice Commission, *Joint report...*, cit., para 64.

<sup>48</sup> ECtHR, *Handyside vs. United Kingdom*, app. no. 5493/72 (1976): «the corollary right of the public to receive information and ideas of all kinds – also those that shock, offend and disturb», §59 ; ECtHR, *Eon v. France*, app. no. 26118/10 (2013).

<sup>49</sup> It is the third principle set out in the *Principles for a fundamental rights-compliant...*, cit., para 59 ff.

<sup>50</sup> In its *Principles for a fundamental rights-compliant...*, cit., the Venice Commission expressly refers to the case law of the ECtHR.

<sup>51</sup> CoE – Venice Commission, *Joint report...*, cit., para 35 ff ; CoE – Venice Commission, *Principles for a fundamental rights-compliant...*, cit., para 10 ff.

is no doubt that such platforms provide a direct space for citizen expression, one capable of influencing society as a whole – as evidenced, for example, by the #MeToo and #BLM movements. Consequently, the annulment of elections – such as occurred in Romania – on the grounds of foreign interference via social media must be considered a measure of last resort. The pro-European candidate, Elena Lasconi, who finished behind Mr. Georgescu, strongly condemned the decision of the RCC<sup>52</sup>. The January 2025 report seems – albeit implicitly – critical of the Court’s ruling, particularly in stating that such a decision cannot be based on classified documents produced by the security services<sup>53</sup>. Yet this was only partially the case on 6 December, as part of the investigation was declassified and published on the official website of the Presidency<sup>54</sup>.

### **2.1.2. Does Social Media Function as a Democratic Agora?**

Structural risks inherent in the use of social media during electoral periods exist and warrant attention, as articulating them helps illuminate the nature of the attacks faced by all liberal Western democracies. The principal issue – which should be central to the reflections of all public actors, whether national or international, including electoral oversight authorities and national courts – is as follows: Can social media serve as a space for democratic deliberation? The centrality of such a space is well established both in classical political philosophy and in contemporary theories, notably that of Habermas<sup>55</sup>. Democracy cannot thrive without debate, which must be understood in a substantive sense, as a respectful exchange of political ideas, facts, and opinions. In other words, it must involve genuine argumentation. This may appear self-evident. Yet the mere circulation of messages that consist in insults, systematic reversal of the burden of proof, or the dissemination of false, unverified, or outrageous claims cannot be deemed to constitute debate. Authentic democratic deliberation presupposes objective discussion, reflective distance, long-term decision-making, and not mere emotional reactions. Consequently, communication on social media cannot, in itself, be taken as proof of democratic discourse, just as the mere holding of elections is not in itself proof of democracy.

---

<sup>52</sup> «Lasconi condemned the court’s ruling as «illegal» and «immoral», saying «today is the moment when the Romanian state has trampled on democracy»», S. Rainsford, *Romanian court annuls result of presidential election first round*, in *BBC.com*, 6 December 2024.

<sup>53</sup> The decision was also criticised for its lack of motivation, see N. Danelciuc-Colodrovski, *Retour sur l’annulation des résultats de l’élection présidentielle par la cour constitutionnelle roumaine : les juges ont-ils sauvé la démocratie ?*, in *blogdroitelectorat.fr*, 10 April 2025.

<sup>54</sup> As previously noted (*supra* note 30), the March 2025 decision of the RCC is more explicit in addressing the situation of interference that occurred in Romania during the first round of the presidential election.

<sup>55</sup> From Jürgen Habermas, see *The Structural Transformation of the Public Sphere: An Inquiry into a category of Bourgeois Society*, Cambridge, 1989 and its sequels : *A New Structural Transformation of the Public Sphere and Deliberative Politics*, Cambridge, 2022. See also *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, Cambridge, 1996.

So, there is a need to refocus the debate. The Commission upholds the right to free elections as encompassing the freedom to form one's own opinion, and extends this to include the right to be adequately informed before making a decision<sup>56</sup>. But is such a right truly attainable on social media platforms? There are at least three issues that tend to support a pessimistic answer to this question<sup>57</sup>.

An issue of democratic education and culture. It is frequently asserted that the harmful nature of social media stems from its users, who allegedly lack the ability to engage in respectful debate.

An issue related to the economic model of social media. If the owners of these platforms are among the wealthiest individuals in the world, it is because their development has been driven by profit motives rather than political ones<sup>58</sup>. Facebook, Twitter, and Instagram were not designed as spaces for democratic exchange.

An issue rooted in the algorithmic structure of these platforms. Here lies the central challenge in the development of the Venice Commission's digital expertise. Legal frameworks may serve as an effective means of regulating the use of AI in this context – something far less certain in regard to the first two aspects.

It can be observed that the third aspect is intrinsically linked to the first two: it is precisely because citizens are increasingly struggling to understand how our democracies function and the political challenges they face that platform owners, for profitability reasons, seek to maximize user “engagement” through algorithmic programming<sup>59</sup>. This has been clearly demonstrated by the Facebook Papers (2021)<sup>60</sup>. The commercial objective is first and foremost to transform these platforms into spaces of entertainment rather than public debate. Admittedly, this strategy is not entirely new. The rise of television gave birth to “infotainment”, the dangers of which were identified some time ago<sup>61</sup>. Social media – poorly named in this regard – are mainly a form of entertainment media. But because their business model is based on free access and the monetization of users' personal data, they must go beyond merely fostering viewer loyalty to certain programs. Timed attention stimulation, as used in television, is no longer sufficient. The user must remain connected for several hours each day – potentially for the majority of their waking hours (something that was not feasible with television). This necessitates mechanisms that lead to a form of dependency, or even addiction, although this term remains subject to

---

<sup>56</sup> «The freedom to form an opinion includes the right to be correctly informed before making a decision», *Joint Report...*, cit., para 122. ; See also *Interpretative declaration to the Code of good practice...*, cit., para 5.

<sup>57</sup> Only the third one is relevant to our study and will therefore be developed.

<sup>58</sup> As with any business enterprise, it would be inappropriate, as a matter of principle, to denounce the entrepreneurs' legitimate pursuit of profit.

<sup>59</sup> A. Gordon-Tapiero – Y. Kaplan, *Unjust Enrichment by Algorithm*, in *George Washington Law Review*, 92(2), 2024, 305 ff.

<sup>60</sup> *The Facebook Files*, in *The Wall Street Journal*, 1<sup>st</sup> October 2021 ; M. Isaac, *Power of Likes Puts Facebook In a Quandary*, in *The New York Times*, 26 October 2021.

<sup>61</sup> N. Postman, *Amusing Ourselves to Death*, London, 1985.

debate in academic literature<sup>62</sup>.

## **2.2. The Issue: Regulating the Algorithmic Architecture of Social Media for Safeguarding Freedom of Thought from the Excesses of Freedom of Expression**

Adopting a realistic approach to social media regulation requires a clear understanding of how these platforms actually function, so as to enable the Venice Commission to establish standards aimed at safeguarding the integrity of the vote – thereby strengthening both the right to free elections and the right to form one’s own opinion. It is first necessary to explain how the algorithmic architecture of these networks is programmed with the objective of securing the users’ maximum “engagement” (2.2.1.). We will then examine its consequence: the radicalization of those users (2.2.2.). Among these platforms, TikTok occupies a particular position that warrants closer examination (2.2.3.).

### **2.2.1. An Algorithmic Design Aimed at Fostering User Dependency on Social Media**

Without delving into technical details, it is worth recalling the structure of social media algorithmic programming<sup>63</sup>. This structure operates on two levels. The content recommendation algorithm constitutes the “visible tip of the iceberg”: this is what the user sees on their homepage or news feed. As the primary goal of social media platform owners is user “engagement” – in order to generate maximal advertising revenue<sup>64</sup> – these recommendations must be, if not relevant, at least sufficiently stimulating to keep users connected for as long as possible. These recommendations concern not only specific content but also the promotion of user participation in targeted groups. In order to make these recommendations effective, the content algorithm is built upon a more fundamental profiling algorithm. This underlying AI system relies on patterns of user engagement – likes, shares, follows, and other interactions – to determine the likelihood that a user will respond positively to similar content. The stronger the engagement observed among users with similar profiles, the more prominently the content will be recommended. Thus, a user who has previously liked content associated with flat-earth theories will likely be directed to conspiracy-related groups and posts, whereas another who has shared ve-

---

<sup>62</sup> M. N. Varona – A. Muela – J. M. Machimbarrena, *Problematic use or addiction? A scoping review on conceptual and operational definitions of negative social networking sites use in adolescents*, in *Addictive Behaviors*, 134, 2022; J. Sherer – L. Petros, *Special Report: Is Social Media Misuse A Bad Habit or Harmful Addiction*, in *Psychiatric News*, 59(4), 2024.

<sup>63</sup> K. Langvardt, *Regulating Habit-Forming Technology*, in *Fordham Law Review*, 88(1), 2019, 129 ff.

<sup>64</sup> A. Gordon-Tapiero – Y. Kaplan, *Unjust Enrichment by Algorithm*, cit., 317 ff.

gan content may be guided toward material concerning climate change activism. This process illustrates one of the most well-documented cognitive distortions facilitated by social media platforms: the confirmation bias<sup>65</sup>. A user who regularly consumes rap music content will almost never be exposed to classical music-related material, and vice versa. One notable study found that some Facebook users who had joined neo-nazi groups had done so following a recommendation on their news feed<sup>66</sup>. While this confirmation bubble is already detrimental to any exchange of reasoned arguments, the nature of social media interactions is further marked by a level of hostility and aggressiveness that prevents these platforms from serving as the democratic agora they are sometimes idealized to be. This deleterious effect – the widely recognized “toxicity” of social media – stems from two distinct factors.

The first factor stems from the general characteristics of exchanges on social media and discussion forums<sup>67</sup>. These interactions are instantaneous, asynchronous, disembodied, and most importantly, anonymous – the mere association of a name with a profile has never guaranteed actual identity. The univocal nature of online statements is also deeply unsettling and does little to encourage the reasoned exchange of arguments<sup>68</sup>. Law – or even soft law – cannot fundamentally alter these inherent structural traits of digital discourse.

The second factor – perhaps of greater relevance for legal academics – relates to the algorithmic programming of AI systems, which ensures that the most controversial, transgressive, and emotionally charged content receives the highest levels of “engagement”, and therefore, the greatest visibility on social media platforms. These platforms do not promote deliberative debate; they amplify provocation and inflammatory rhetoric<sup>69</sup>. It is often overlooked by the general public that AI developers have drawn extensively from leading academic research in neuroscience to engineer this phenomenon<sup>70</sup>. Simplified, these studies show that negative emotional

<sup>65</sup> R. T. Bedeley – H. Hao – T. Ghoshal, *Cognitive Biases in Online Opinion Platforms: A Review and Mapping*, in *Sage Open*, 15(1), 2025.

<sup>66</sup> S. Dean, *Facebook decided which users are interested in Nazis – and let advertisers target them directly*, in *Los Angeles Times*, 21 February 2019 ; P. Kari, *‘It let white supremacists organize’: the toxic legacy of Facebook’s Groups*, in *The Guardian*, 4 February 2021 ; T. De Chant, *Facebook has been autogenerating pages for white supremacists*, in *arstechnica.com*, 25 mars 2021.

<sup>67</sup> H. Li – R. E. Kraut – H. Zhu, *Technical Features of Asynchronous and Synchronous Community Platforms and their Effects on Community Cohesion: A Comparative Study of Forum-based and Chat-based Online Mental Health Communities*, in *Journal of Computer-Mediated Communication*, 26(6), 2021, 403 ff. ; G. and W. Riva – K. Brenda – F. Mantovani, *The Disembodied Disconnect Hypothesis: How Online Interactions Undermine Neurobiological Foundations of Social Cohesion*, in *Cyberpsychology, Behavior, and Social Networking*, 27(10), 2024, 680 ff.

<sup>68</sup> B.-C. Han, *The Expulsion of the Other: Society, Perception and Communication Today*, Cambridge, 2018.

<sup>69</sup> S. Gottschalk, *Accelerators, Amplifiers, and Conductors: A Model of Tertiary Deviance in Online White Supremacist Networks*, in *Deviant Behavior*, 41(7), 2020, 841 ff.

<sup>70</sup> A. Satani – K.K. Satani – P. Barodia – H. Joshi, *Modern Day High: The Neurocognitive Impact of Social Media Usage*, in *Cureus*, 17(7), 2025; A.D.I. Kramer – J.E. Guillory – J.T. Hancock, *Experimental evidence of massive-scale emotional contagion through social networks*, in *Proceedings of the National Academy of Sciences of the United States of America*, 111(24), 8788 ff.

stimuli – such as calling someone a “nazi” or “woke” – trigger significantly more engagement than positive emotions (e.g., sharing videos of cats or babies). In contrast, content that requires intellectual effort, such as critical analysis, contextualization, or fact-checking, tends to provoke a more restrained user response, and thus holds little commercial value for platform owners.

As a result, frustration, hatred, and anger are precisely the reactions that platform designers seek to maximize to increase profits. AI systems are capable of identifying and capitalizing on these emotions – for instance, through the use of the “angry” emoji, which was introduced by Mark Zuckerberg in the early 2010s specifically to boost engagement on his platform. The Facebook Papers revealed that content eliciting primarily “angry” reactions is four to five times more likely to be promoted by the algorithm than content eliciting “likes” or “heart” emojis. The clear objective is to present users with the most polarizing material possible. Let us pause for a moment on a particularly shocking example, the limited consequences of which remain difficult to comprehend. The assault on the United States Capitol on 6 January 2021 was precipitated by Trump’s speech earlier that same morning. The circulation of that speech generated unprecedented levels of “engagement” on Facebook (#StopTheSteal), as had the numerous posts in the preceding days “predicting” that his supporters would prevent Congress from confirming President-elect Biden’s victory. The millions of “angry” emojis posted on the platform left little doubt as to what was to come. Facebook’s content moderation authorities could have acted: they might have limited the visibility of violent material (including Trump’s speech, which explicitly called for a coup d’État), or at the very least alerted the competent authorities that there existed a serious risk the planned demonstration in support of Trump would degenerate into a riot<sup>71</sup>. What did Facebook do? Nothing. The result: five deaths, and a profound blow to the image of American democracy.

### **2.2.2. Algorithmic Programming Leading to the Radicalization of Social Media Users**

Social media platforms are programmed to elicit visceral reactions from their users, a tendency reinforced by the immediacy of online communication. The combination of negative emotional stimuli and the so-called “confirmation bubble” traps users in a vicious cycle that can result in the normalization of radical discourse and, ultimately, in the erosion of the “Overton window”<sup>72</sup>. This constitutes a process of user radicalization –

---

<sup>71</sup> J. Horwitz, *Facebook Knew Calls for Violence Plagued ‘Groups,’ Now Plans Overhaul*, in *The Wall Street Journal*, 31 January 2021 ; C. Silverman – C. Timberg – J. Kao – J. B. Merrill, *Facebook groups topped 10,000 daily attacks on election before Jan. 6, analysis shows*, in *The Washington Post*, 4 January 2022. See also : Q. Li – B. G. King – B. Uzzi, *Quantifying social media predictors of violence during the 6 January US Capitol insurrection using Granger causality*, in *Journal of the Royal Society Interface*, 2024.

<sup>72</sup> The “Overton window” refers to the range of policies or ideas that are considered politically acceptable or mainstream at a given time within public discourse. The concept

one that often goes unnoticed by the users themselves, as their informational bubbles are either wholly affirmative or entirely antagonistic<sup>73</sup>. They are affirmative in the sense that users are primarily exposed to content that mirrors their own posts, likes, and shares. At the same time, they are antagonistic in that the algorithm also recommends content that it has identified as being diametrically opposed to the user's opinions. This is where the “angry” emoji plays a central role: users are shown content that aligns with what similar profiles appreciate, but even more so, they are shown content that their demographic group collectively despises, four to five times more frequently. Conversely, the algorithm seldom, if ever, promotes moderate content or that which is proximate – but not identical – to the user's profile. For instance, a far-right voter will be presented with content from both far-right and far-left users. This antithetical exposure, however, is not equivalent to pluralism. It does not foster balance or open-mindedness; rather, it exacerbates polarization. The very architecture of these algorithms thus actively contributes to the disappearance of nuance and civility in online discourse – manifested through mutual dehumanization and immediate recourse to insult – and is consequently a driving factor behind the aggression, hate speech, and extremism endemic to these platforms. The cumulative effects of daily social media use are, therefore, liable to infringe upon the right to be adequately informed prior to making a decision, and may even undermine the very freedom of thought. The stimulation induced by the algorithmic architecture of social media prevents individuals from thinking rationally, instead promoting emotional responses that can drive them toward radicalization.

Clearly, it is difficult at present for the Venice Commission – or any other public authority – to assert definitively that social media platforms are inherently incompatible with democratic deliberation. Such a conclusion remains fundamentally counterintuitive and inaccurate: while the vast majority of exchanges on these platforms exhibit problematic characteristics, this is not universally the case. However, as in other areas of fundamental rights law, it is necessary to distinguish between freedom of expression, freedom of thought, and the right to free and fair elections. While the use of social media undoubtedly facilitates the first of these rights, its contribution to the latter two is considerably more tenuous. Thus, rather than calling for prohibition, which is by nature counterproductive in a liberal democracy and technically difficult to implement, a legal framework should be established to regulate these platforms. What should such a framework target? Politicians, media commentators, and academics often focus on users: proposing time limits, incorporating digital literacy into school cur-

---

suggests that only proposals falling within this window are viable for politicians to support without risking marginalization. Ideas outside the window are perceived as too radical or unthinkable, while those inside are seen as sensible and legitimate. M. Astor, *How the Politically Unthinkable Can Become Mainstream*, in *The New-York Times*, 26 February 2019. Such statements are endorsed by social media leaders, such as Musk, and by influential content creators.

<sup>73</sup> A. R. Arguedas – C. T. Robertson – R. Fletcher – R. K. Nielsen, *Echo Chambers, Filter Bubbles, and Polarisation: a Literature Review*, in *reutersinstitute.politics.ox.ac.uk*, 19 January 2022; S. Weale, *Social media algorithms ‘amplifying misogynistic content’*, in *The Guardian*, 6 February 2024.

ricula, or strengthening fact-checking mechanisms and community notes. We remain skeptical of these solutions, as they may produce unintended and counterproductive effects. For example, fact-checking has, in some contexts, had the opposite of the intended effect, creating a perception of authoritarianism that provokes user resistance. Instead, we advocate for a legal approach aimed at the programming of AI<sup>74</sup>. As a starting point, the algorithmic amplification of “anger” reactions should be prohibited – or even reversed – so that content eliciting such engagement is down-ranked rather than promoted. The core idea is that, if platforms can be programmed to favor content that triggers negative emotional responses, they can equally be programmed to do the opposite. This should be mandated as a legal obligation for economic operators in the sector. In the absence of such regulation, the Venice Commission could adopt a principled stance that takes these dynamics into account, particularly in the context of electoral oversight.

### **2.2.3. TikTok’s Algorithm: A Foreign Weapon in the Service of Disinformation**

In its report, the Venice Commission emphasizes the difficulty faced by electoral authorities in proving external interference and, consequently, in justifying the annulment of an election by a constitutional court: «External influence, including from abroad, can have the same (or even stronger) effects as internal influence (from State officials or political parties)»<sup>75</sup>. However, a growing body of evidence – drawn from both official reports and independent research – indicates that one social media in particular has become a highly effective and deliberately used instrument of electoral interference: TikTok. For those engaged in the study of such issues, it is therefore not surprising that this specific platform was at the center of the annulment of the Romanian presidential elections.

Much has been said about TikTok’s particularly harmful effects among social media platforms – especially regarding its impact on teenagers’ mental health<sup>76</sup>. Numerous institutional sources suggest that this harm may be intentional, reflecting a strategy by the Chinese Communist Party to dest-

---

<sup>74</sup> The idea was initially introduced and has continued to develop following the publication of the Facebook Files : W. Oremus, *Lawmakers’ Latest Idea to Fix Facebook: Regulate the Algorithm*, in *The Washington Post*, 12 October 2021. See also: A. B. Cyphert – J. T. Martin, “*A change is gonna come*”: developing liability framework for social media algorithmic amplification, in *UC Irvine Law Review*, 13(1), 2022, 155 ff.

<sup>75</sup> CoE – Venice Commission, *Urgent Report...*, cit., para 49.

<sup>76</sup> N. Costello – R. Sutton – M. Jones – M. Almassian – M. A. Raffoul – A. O. Ojumu, *alii.*, *Algorithms addiction and adolescent mental health: An Interdisciplinary Study to Inform State-level Policy Action to Protect Youth from the Dangers of Social Media*, in *American Journal of Law & Medicine*, 49(2–3), 2023, 135 ff. ; M. Cantero Gamito, *Do Too Many Cooks Spoil the Broth? How EU Law Underenforcement Allows TikTok’s Violations of Minors’ Rights*, in *Journal of Consumer Policy*, 46, 2023, 281 ff.; P. Galanis – A. Katsiroumpa – Z. Katsiroumpa – P. Mangoulia – P. Gallos – I. Moisoglou – E. Koukia. *Association between problematic TikTok use and mental health: A systematic review and meta-analysis*, in *AIMS Public Health*, 12(2), 2025, 491 ff.

abilize Western societies. The most compelling evidence for this intention is its ban within Chinese territory<sup>77</sup>. What distinguishes TikTok from other social media platforms? The platform is based on short-form videos, which significantly heightens its addictive nature (particularly for younger users)<sup>78</sup>. Its algorithm is specifically engineered to amplify conspiracy-oriented and radical content, as well as material relating to self-harm, or the glorification of anorexia and eating disorders, which disproportionately affect adolescents (and especially teenage girls). While compulsive use of the platform (averaging over 8 hours per week) has been linked to violations of the right to health and, in extreme cases, the right to life, its algorithm has also been accused of infringing upon “neuro-rights”<sup>79</sup> and the freedom of thought. One of NATO’s research areas focuses now on the concept of “cognitive warfare”<sup>80</sup>. The first symposium on this topic was held in France in 2021<sup>81</sup>. However, let’s confine our analysis here to electoral issues.

As evidenced by the French Senate’s report on foreign interference<sup>82</sup>, the report of the European Parliament<sup>83</sup>, and the findings of various Western cybersecurity and disinformation research agencies, the dissemination of TikTok is seen as part of a broader Chinese strategy aimed at destabilizing liberal democracies<sup>84</sup>. The bodies of the European Union and the Council of Europe have now gathered indisputable proof<sup>85</sup>. It is further

---

<sup>77</sup> M. Zahn, *Is TikTok different in China? Here’s what to know*, in *abcnews.go.com*, 19 March 2024.

<sup>78</sup> Furthermore, following the rapid growth of TikTok’s user base in the early 2020s, all major social media platforms subsequently introduced their own short-video formats — including Facebook, Instagram, Twitter, YouTube, and even LinkedIn.

<sup>79</sup> The recognition of neuro-rights is one of the emerging themes in current fundamental rights research. Although not yet acknowledged in positive law or case law, it is based on the idea that certain digital activities may impair the neurological functioning of the brain. In essence, it reflects a materialization of the risks posed to freedom of thought – risks that, until recently, belonged more to the realm of science fiction. That said, attempts to alter the cognitive functioning of political opponents were, during the Cold War, the subject of serious research programs conducted by intelligence services on both sides.

<sup>80</sup> *Protecting the Alliance Against the Threat of Cognitive Warfare*, in *act.nato.int*.

<sup>81</sup> NATO, *Cognitive Warfare: The Future of Cognitive Dominance. First NATO scientific meeting on Cognitive Warfare*, Bordeaux, 21 June 2021. See C. Deppe – G. S. Schaal, *Cognitive warfare: a conceptual analysis of the NATO ACT cognitive warfare exploratory concept*, in *Frontiers in Big Data*, 7, 2024.

<sup>82</sup> Sénat [French], *La Tactique TikTok : Opacité, Addiction et Ombres Chinoises*, Tome I - Rapport n° 831, 4 July 2023 ; Assemblée Nationale [French], *Rapport d’information déposé par la commission des affaires européennes portant observations sur la proposition de loi visant à prévenir les ingérences étrangères en France*, Rapport no. 2385 (2150), 20 March 2024.

<sup>83</sup> EU – European Parliament, *Report on foreign interference in all democratic processes in the European Union, including disinformation*, 2022/2075(INI), 1<sup>st</sup> June 2023.

<sup>84</sup> J. E. Gray, *The geopolitics of ‘platforms’: the TikTok challenge*, in *Internet Policy Review*, 10(2), 2021; A. Kokas, *Why TikTok Is a Threat to Democracy*, in *Journal of Democracy*, October 2022.

<sup>85</sup> EU – European External Action Service, *3rd Report on Foreign Information Manipulation & Interference (FIMI)*, March 2025 ; CoE – CDADI, *Study on preventing and combating hate speech in times of crisis*, 2023; COE – Congress of Local and Regional Authorities, *Report on foreign interference in electoral processes at local and regional levels*, CG(2025)48-10, 28 March 2025.

noteworthy that the Irish Data Protection Commission recently imposed a substantial penalty of €530 million on TikTok for infringements of the GDPR<sup>86</sup>. Rather than resorting to traditional methods of subversion, the Chinese Communist government has effectively provided a digital infrastructure enabling the enemies of liberal democracies – including Russia, radical Islamist groups, conspiracy theorists, and the radical far-right<sup>87</sup> – to conduct and spread their propaganda. An increasing number of countries have opted to ban TikTok outright<sup>88</sup>, whether for well-founded or questionable reasons. This is precisely what occurred in Romania, where 9 million of the country's 19 million inhabitants use the platform. The RCC, in its decision to annul the first round of the presidential election, relied on the very types of analyses outlined above. Following its growing mastery of the Chinese platform's potential for spreading disinformation and degrading democratic discourse – building on experience from previous interference operations in Georgia<sup>89</sup> and Moldova<sup>90</sup> – Russia successfully leveraged TikTok to promote its favored candidate. This conclusion is supported by the findings of Romanian intelligence services<sup>91</sup>, a French governmental agency<sup>92</sup>, various media investigations, and independent NGO reports<sup>93</sup>.

### 3. Conclusion

In order to refine its digital expertise, the Venice Commission should draw all the necessary conclusions from the very nature of social media plat-

---

<sup>86</sup> Irish Data Protection Commission, *Decision in the matter of TikTok Technology Limited*, 2 May 2025.

<sup>87</sup> M. J. Cartes-Barroso – N. García-Estévez – S. Méndez-Muros, *Attracting the Vote on TikTok: Far-Right Parties' Emotional Communication Strategies in the 2024 European Elections*, in *Journalism and Media*, 6(1), 2025, 33 ff ; R.Radu, *Expert Comment: Which urgent tech lessons must the EU take from Romania's election?*, in *ox.ac.uk*, 22 May 2025 ; *Russian state media is posting more on TikTok ahead of the U.S. presidential election, study says*, in *apnews.com*, 2 May 2024.

<sup>88</sup> In India, Pakistan, Afghanistan, Jordan, Nepal, Albania, and temporarily in the United States and Australia (for individuals under the age of 16), TikTok has been banned. It is also prohibited – albeit for cybersecurity reasons – for certain government officials or senior public administrators to install TikTok on their smartphones, as is the case in the European Union, France, the United Kingdom, the Netherlands, New Zealand, and Belgium.

<sup>89</sup> *TikTok's Growing Prominence as a Channel for the Spread of Anti-Western Disinformation and Pro-Russian Propaganda in Georgia*, in *factcheck.ge*, 3 December 2025.

<sup>90</sup> S. McGrath, *Moldova's election faces AI-driven disinformation from Russia*, in *apnews.com*, 22 September 2025.

<sup>91</sup> *Comunicat de presă*, in *presidency.ro*, 4 December 2024. On 4 December, the Romanian intelligence services declassified a number of documents that serve to justify the decision rendered by the RCC.

<sup>92</sup> VIGINUM, *Manipulation d'algorithmes et instrumentalisation d'influenceurs. Enseignements de l'élection présidentielle en Roumanie & risques pour la France*, février 2025.

<sup>93</sup> Economist Intelligence Unit, *What's wrong with representative democracy? Democracy Index 2024*, in *ciu.com*, 63.

forms: undeniably a space for freedom of expression, though more problematically a forum for democratic deliberation. The protection of the right to free elections cannot be achieved without a more comprehensive development of the right to the quality of information. Consequently, what must be proposed – and this should be regarded as an absolute priority for all public policymakers – is not a regulation of expression itself, but of the algorithms that enable these platforms to operate (and to spread fake news). A second foundation for such regulation, which has only been alluded to here and which appears to be essential, lies in the observation that the massive – potentially addictive – use of social media leads to a violation of users’ freedom of thought, a phenomenon unprecedented in human history. In light of these numerous findings, it would be entirely appropriate for the Venice Commission to strengthen its standards, by placing greater emphasis on the structural risks of electoral manipulation posed specifically by the Chinese social media platform. Consequently, while the annulment of elections must, of course, remain an exceptional measure, the present context provides an additional justification for such an outcome.

## **Abstract**

This article examines the challenges that algorithmic social media platforms pose to the protection of the right to free elections as guaranteed by Article 3 of Protocol No. 1 to the European Convention on Human Rights. Using the 2024 annulment of the Romanian presidential election as a case study, it argues that electoral law must evolve beyond traditional frameworks to address algorithmic manipulation, disinformation, and foreign interference. The paper contends that safeguarding electoral integrity requires regulating the architecture of algorithms rather than expression itself, in order to preserve both freedom of thought and democratic deliberation. It concludes by calling for the Venice Commission to develop a form of *digital expertise* capable of setting European standards for democracy in the algorithmic age.

## **Keywords**

social media – right to free elections – Venice Commission – Romania – democracy